

# IOWA DEPARTMENT OF NATURAL RESOURCES

## ADMINISTRATIVE ORDER

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**IN THE MATTER OF:**

**BHUPINDER GANGAHAR,  
SAROJ GANGAHAR, AND  
INTERNATIONAL BUSINESS, INC.**

**REG. NO. 198601921, LUST NO. 9LTM84**

**ADMINISTRATIVE ORDER**

**2012-UT-02**

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**TO: Bhupinder and Saroj Gangahar  
17106 Oakmont Drive  
Omaha, NE 68136**

**International Business, Inc.  
c/o Bhupinder Gangahar, Reg. Agent  
17106 Oakmont Drive  
Omaha, NE 68136**

### I. SUMMARY

The Iowa Department of Natural Resources (Department) issues this Administrative Order (Order) to Bhupinder and Saroj Gangahar (Gangahars), and International Business, Inc. (International Business) to address regulatory violations related to overdue site assessments and tank fees. This Order requires the Gangahars and International Business to contract with a certified groundwater professional within 14 days, submit a revised Tier 2 Site Cleanup Report within 60 days, pay tank management fees of \$1,890.00 within 30 days, and pay an administrative penalty of \$7,934.82 within 30 days. See Sections IV and V for more details.

Any questions regarding this Order should be directed to:

**Relating to technical requirements:**

Tammy Vander Bloemen  
Iowa Department of Natural Resources  
Henry A. Wallace Building  
Des Moines, Iowa 50319-0034  
Ph: 515/281-8957

Or

Paul Nelson  
Iowa Department of Natural Resources  
Henry A. Wallace Building  
Des Moines, Iowa 50319-0034  
Ph: 515/281-8779

**Relating to legal requirements:**

Aaron Brees, Attorney  
Iowa Department of Natural Resources  
Des Moines, Iowa 50319-0034  
Ph: 515/281-5965  
aaron.brees@dnr.iowa.gov

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 503219-0034

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## II. JURISDICTION

This Order is issued pursuant to Iowa Code sections 455B.474(1)(f)(11) and 455B.476, which authorize the Director of the Department to issue any order necessary to secure compliance with Iowa Code chapter 455B, Division IV, Part 8 and Department rules contained in chapter 567 Iowa Administrative Code (IAC) 135. Iowa Code section 455B.109 and administrative rules in chapter 567 IAC 10 authorize the Director to assess administrative penalties up to \$10,000.

## III. STATEMENT OF FACTS

1. Gangahars and International Business were owners and/or operators of a facility known as G's BP, located at 3540 West Broadway, Council Bluffs, Iowa, from August 31, 2004 through some point in 2010, by which time the property had been foreclosed upon and sold at a sheriff's sale. This site was a convenience store containing three 8,000 gallon underground storage tanks (USTs) used for the retail sale of petroleum fuel products.
2. In November 2006, a leak was discovered in the UST system. A site check conducted by RDG Geoscience & Engineering, Inc. (RDG) found benzene in the groundwater at a level of 10,400 ppb.
3. In 2006 and 2007, site assessment activities were conducted and submittal of a Tier 2 site cleanup report to the Department was required.
4. A Tier 2 report was received by the Department on June 29, 2007. This report was rejected and a letter requiring a revised report was mailed to Vic Gangahar at G's BP on July 24, 2008.
5. Having not received a revised report, the Department mailed an overdue notice letter to Vic Gangahar at G's BP on July 24, 2009 and to Bupinder Gangahar and International Business, Inc. on October 13, 2009.
6. In 2009, mortgage holder American National Bank (Bank) began foreclosure proceedings on the property.
7. On April 5, 2010, the Department received a revised Tier 2 report. This report was contracted for by the Bank in the interest of moving the site toward no action required (NAR) status so that it could more readily be sold.
8. On August 3, 2010, the Department again found the Tier 2 report deficient and rejected it. A letter was sent to Bhupinder Gangahar on that date, requiring submission of a revised report by November 2, 2010.

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9. Having not received a revised Tier 2 report, the Department mailed a final overdue notice letter to Bhupinder Gangahar on December 8, 2010. No report has been received to date.

10. For the years 2009 and 2010, Gangahars and International Business failed to pay mandatory tank management fees. The Department sent multiple letters to Gangahars during 2009 and 2010 which reminding them of upcoming deadlines for payment of fees, of deadlines to avoid late fees, and then lastly, that their fees were overdue. No response was received.

#### IV. CONCLUSIONS OF LAW

1. Iowa Code chapter 455B, Division IV, Part 8 (sections 455B.471-455B.479) establishes the USI program. Section 455B.472 declares that the release of regulated substances, including petroleum products, from USIs constitutes a threat to the public health and safety and to the natural resources of the state, and this regulatory program is necessary to adequately address this concern. Iowa Code section 455B.474 authorizes the Environmental Protection Commission (Commission) to adopt rules related to release detection and prevention, financial responsibility, tank closure, site assessment, risk classification, corrective action, and reporting and record keeping requirements applicable to all owners and operators of USIs. The Commission has adopted such rules in 567 IAC chapters 135 and 136.

2. Iowa Code section 455B.471(6) defines an "owner" of USIs. Gangahars and International Business were owners of USIs at the above referenced facility at all times relevant to this Order.

3. Iowa Code section 455B.471(5) defines "operator" of USIs as "...a person in control of, or having responsibility for, the daily operation of the underground storage tank." Gangahars and International Business were operators of the above referenced facility at all times relevant to this Order.

4. Iowa Code section 455B.474(1)(f) requires the Commission to adopt rules to establish corrective action response requirements for the release of regulated substances, including petroleum. The Commission has adopted "risk-based corrective action" (RBCA) rules in 567 IAC 135.8-10. Subsection 135.9(2) states that "...a Tier 1 assessment must be completed in response to release confirmation..." or "...reliable laboratory analysis which confirms the presence of contamination above the action levels in 567—135.14(455B)."

A release was confirmed at the site, triggering the RBCA rules.

5. 567 IAC 135.10(1) states that a "Tier 2 assessment must be conducted and a site cleanup report submitted for all sites which have not obtained a no action required site classification...as provided in 567—135.9(455B)." Gangahars and International

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Business have not obtained a "no action required" site classification and are therefore required to submit an acceptable Tier 2 site cleanup report.

6. Gangahars and International Business have failed to submit an acceptable Tier 2 report to the Department. This is a violation of 567 IAC 135.10.

7. 567 IAC 135.3(5)(b) states that the "owner or operator of tanks... must submit a tank management fee of \$65 per tank by January 15 of each year" in order to obtain an annual tank registration tag. 567 IAC 135.3(3)(k) states that an owner or operator who fails to obtain an annual registration tag by April 1 shall pay an additional \$250 for registration of each tank. Gangahars and International Business have failed to submit such fees for 2009 and 2010 in violation of these rules.

**V. ORDER**

THEFORE, the Department orders the Gangahars and International Business to do the following:

1. Gangahars and International Business shall pay to the order of the Department an administrative penalty of \$7,934.82 within 60 days of receipt of this Order.
2. Gangahars and International Business shall submit year 2009 and 2010 tank management fees to the Department in the amount of \$1,890.00 within 30 days of receipt of this Order.
3. Gangahars and International Business shall contract with a certified groundwater professional for the purpose of completing a Tier 2 site cleanup report within 14 days of receipt of this Order.
4. Gangahars and International Business shall complete and submit to the Department a Tier 2 site cleanup report within 60 days of receipt of this Order.
5. Gangahars and International Business shall conduct any additional assessment, monitoring, or remediation which the Department may require upon review of the Tier 2 site cleanup report.

**VI. PENALTY**

1. Iowa Code section 455B.477 authorizes the assessment of civil penalties in Iowa District Court of up to \$5,000 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision.

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2. Iowa Code sections 455B.476 and 455B.109 authorize the Commission to establish by rule a schedule of civil penalties up to \$10,000 which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties. See 567 IAC 10. Pursuant to this rule, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order with a penalty.

**ECONOMIC BENEFIT:** A Tier 2 site cleanup report has been overdue since July 2008. An average Tier 2 site cleanup report costs \$2,900. By deferring these costs, Gangahars and International Business have benefitted by earning interest on this amount. Applying Iowa Department of Revenue interest rates for the relevant time periods produces the following benefit:

July – December 2008: \$2,900 @ 0.8% per month = \$139.20  
2009: \$2,900 @ 8% per year = \$232.00  
2010: \$2,900 @ 5% per year = \$145.00  
2011: \$2,900 @ 5% per year = \$145.00  
January -- February 2012: \$2,900 @ 0.4% per month = \$23.20

The 2009 annual tank tag fees of \$315 (\$65 + 250) per tank for three tanks have been overdue since April 1, 2009 resulting in the following economic benefit:

April – December 2009: \$945 @ 0.7% per month = \$59.53  
2010: \$945 @ 5% per year = \$47.25  
2011: \$945 @ 5% per year = \$47.25  
January -- February 2012: \$945 @ 0.4% per month = \$7.56

The 2010 annual tank tag fees of \$315 (\$65 + 250) per tank for three tanks have been overdue since April 1, 2010 resulting in the following economic benefit:

April – December 2010: \$945 @ 0.4% per month = \$34.02  
2011: \$945 @ 5% per year = \$47.25  
January – February 2012: \$945 @ 0.4% per month = \$7.56

Total Economic Benefit: \$934.82

This economic benefit total assumes that Gangahars and International Business will conduct a Tier 2 report and pay the overdue tank fees named in this Order, and therefore will not benefit by avoiding the actual cost of the report and fees.

**GRAVITY:** Failure to respond appropriately to a petroleum release is a serious violation which can endanger human health and the environment and undermines the effectiveness of the regulatory program which is designed to prevent and detect releases from USTs. Accordingly, \$3,000 is assessed for this factor.

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**CULPABILITY:** The Department has attempted to gain compliance at this site for several years. Gangahars and International Business have been aware of what is required of them through extensive communications from the Department. Given the length of time involved and the repeated information regarding compliance provided to Gangahars and International Business, failure to comply is considered willful. As such, \$3,000 is assessed for this factor.

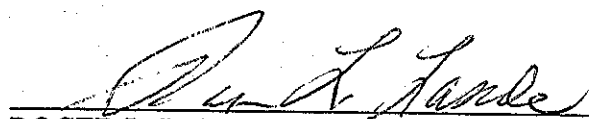
**MITIGATING OR AGGRAVATING FACTORS:** Work at this site has not proceeded even though funding is available through an insurance claim by International Business. The original groundwater professional hired to conduct work on the site withdrew due to nonpayment for services rendered, despite the insurance company providing Mr. Gangahar with the funds needed for the project. Given the above circumstances and Gangahars and International Business's repeated failure to correct the situation, an additional penalty of \$1,000 is assessed.

### VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.476 and 561 IAC 7, as adopted by reference by 567 IAC 7, a written Notice of Appeal to the Commission may be filed within 30 days of receipt of this Order. The Notice of Appeal should be filed with the Director of the Department, and must identify the specific portion or portions of this Order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 567 IAC 7.

### VIII. NONCOMPLIANCE

Failure to comply with this Order may result in the imposition of administrative penalties or referral to the Attorney General to obtain appropriate relief pursuant to Iowa Code section 455B.477. Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order.

  
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ROGER L. LANDE  
DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 4th day of March, 2012

Bhupinder Gangahar, Saroj Gangahar, International Business, Inc.; Tammy Vander Bloemen; Paul Nelson; Aaron Brees; V(A), V(F)